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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION
16

17 PETER ENGLANDER,

18 Plaintiff,

19 v.

20 GLOBAL AMICI, INC.; *et al.*,

21 Defendant.
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Case No. 17CV317191

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by and between plaintiff Peter Englander (“Englander”),
4 and Global Amici, Inc. (“Global Amici”) with Englander and Global Amici each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is an individual residing in California who seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Englander alleges that Global Amici employs ten or more individuals and is a “person in the
12 course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Global Amici manufactures, sells, and distributes for sale in California
16 glass jars with exterior designs containing lead, and that it does so without first providing the health
17 hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical
18 known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Products” are defined as glass jars with exterior
21 designs, including but not limited to the *Organized Kitchen Kitchenware Asst S/s Blk Lid Home Sm*
22 *Herm Pres, UPC #9 23377 13384 3*, that are imported, manufactured, sold, or distributed for sale in
23 California by Global Amici.

24 **1.6 Notice of Violation**

25 On May 31, 2017, Englander served Global Amici, the California Attorney General, and all
26 other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges
27 that Global Amici violated Proposition 65 by failing to warn its customers and consumers in
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1 California of the health risks associated with exposures to lead from the Products. No public enforcer
2 has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On October 11, Englander filed the instant action (“Complaint”), naming Global Amici as a
5 defendant for the alleged violations that are the subject of the Notice.

6 **1.8 No Admission**

7 Global Amici denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all the products that it has imported, manufactured, sold, or distributed
9 for sale in California, including the Products, have been and are in compliance with all laws. Nothing
10 in this Consent Judgment shall be construed as an admission by Global Amici of any fact, finding,
11 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
12 constitute or be construed as an admission by Global Amici of any fact, finding, conclusion, issue of
13 law, or violation of law, the same being denied by Global Amici. This Section shall not, however,
14 diminish or otherwise affect Global Amici’s obligations, responsibilities, and duties under this
15 Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
18 jurisdiction over Global Amici as to the allegations in the Complaint, that venue is proper in the
19 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Motion for Approval of the Consent Judgment is granted and entered by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Commitment to Reformulate Products or Provide Warnings**

26 Commencing 30 days from the Effective Date and continuing thereafter, Global Amici shall
27 only purchase for sale or manufacture for sale in California, (a) “Reformulated Products” as defined
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by Section 2.2; or (b) Products sold with a clear and reasonable warning in California in accordance with Section 2.3.

2.2 Reformulated Products Defined

For purposes of this Consent Judgment, Reformulated Products are defined as Products that:

(a) contain lead in concentrations of no more than 90 parts per million (“ppm”) in any exterior decorations analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. In addition, Reformulated Products yield a result of “Non-detect” (defined as no more than 25 ppm lead content) in any decoration(s) located in the upper 20 centimeters of a Product, i.e., the “Lip-and-Rim” area of the vessel, or on any decoration(s) located on the interior surface of the Product (i.e., the beverage-containing portion) when analyzed pursuant to EPA testing methodologies 3050B and 6010B. In addition to the testing methodologies provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for the purpose of determining lead content in a solid substance to analyze a Product for the purpose of determining whether it qualifies as a Reformulated Product under this Consent Judgment.

2.3 Clear and Reasonable Warnings


Commencing 30 days from the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Global Amici that are not Reformulated Products, Global Amici will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Global Amici further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed

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1 directly to a Product or its accompanying labeling or packaging sold in California that states:

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3  **WARNING:** This product can expose you to chemicals
4 including lead, which is known to the State of California to
5 cause birth defects or other reproductive harm. For more
6 information go to www.P65Warnings.ca.gov.

7 or

8  **WARNING** Reproductive Harm –
9 www.P65Warnings.ca.gov.

10 At its option, Global Amici may use alternative methods of transmission specified by Title 27, Art. 6,
11 § 25602.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Civil Penalty Payment**

14 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
15 to in the Notice, Complaint, and this Consent Judgment, Global Amici shall pay a total of \$3,250 in
16 civil penalties. Global Amici's civil penalty payment shall be allocated according to Health and
17 Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the
18 California Office of Environmental Health Hazard Assessment ("OEHHA"), and twenty-five percent
19 (25%) of the funds remitted to Englander. Global Amici shall provide its payment within ten (10)
20 business days of the Effective Date in two checks for the following amounts made payable to: (a)
21 "OEHHA" in the amount of \$2,437.50; and (b) "Peter Englander, Client Trust Account" in the
22 amount of \$812.50. Englander's counsel shall be responsible for delivering the penalty payment to
23 OEHHA.

24 **3.2 Reimbursement of Attorney's Fees and Costs**

25 The parties acknowledge that Englander and his counsel offered to resolve this dispute
26 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, the Parties negotiated a reimbursement of the
compensation due to Englander and his counsel under general contract principles and the private
attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work

1 performed through the approval and entry of this Consent Judgment. Accordingly, Global Amici
2 agrees to pay \$29,750 for all fees and costs incurred by Englander investigating, bringing this matter
3 to Global Amici's attention, litigating and negotiating a settlement in the public interest, and
4 obtaining court approval of the same. Global Amici's payment shall be delivered within ten (10)
5 business days of the Effective Date in a single check made payable to "The Chanler Group."

6 **3.3 Payment Address**

7 All payments under this Consent Judgment shall be delivered to:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Englander's Release of Proposition 65 Claims**

13 Englander, acting in the public interest and acting on his own behalf and on behalf of his past
14 and current attorneys, agents, representatives, successors, and assigns, waives all rights to institute or
15 participate in (directly or indirectly) any form of legal action, and releases and waives all actions,
16 causes of action, obligations, costs, expenses, fees (including, but not limited to, attorneys' fees,
17 investigation fees, and expert fees), damages, losses, claims, liabilities and demands (collectively,
18 "Claims") against Global Amici, its parents, subsidiaries, affiliated entities under common
19 ownership, directors, officers, shareholders, employees, attorneys, representatives, successors, and
20 assigns, and each entity to whom Global Amici directly or indirectly distributes or sells Products,
21 including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
22 franchisers, franchisees, cooperative members, licensors, licensees, Tuesday Morning, Inc., Tuesday
23 Morning Corporation, and Tuesday Morning Partners, Ltd., and the manufacturers, importers, and
24 suppliers of the Products (collectively, "Releasees"), with respect to any alleged violations arising
25 under Proposition 65 for unwarned exposures to lead from the Products manufactured, imported,
26 distributed, or sold by Global Amici prior to the Effective Date, as set forth in the Notice and
27 Complaint. This Consent Judgment is a full, final, and binding resolution as to the Claims referenced
28 in this Section 4.1. Compliance with the terms of this Consent Judgment by Global Amici constitutes

1 compliance with Proposition 65 by Releasees with respect to any exposures to lead in Products
2 manufactured, imported, sold, or distributed for sale by Global Amici after the Effective Date.

3 **4.2 Englander's Individual Release of Claims**

4 Englander, in his individual capacity only and *not* in his representative capacity, also provides
5 a release on behalf of himself, his past and current agents, representatives, attorneys, successors, and
6 assigns as to all Releasees, which shall be effective as a full and final accord and satisfaction, as a bar
7 to all Claims of any nature, character, or kind, whether known or unknown, suspected or unsuspected,
8 arising out of alleged or actual exposures to lead in Products imported, manufactured, distributed, or
9 sold by Global Amici before the Effective Date. Englander further acknowledges that he is familiar
10 with Section 1542 of the California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
12 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
13 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

14 Englander, his past and current agents, representatives, attorneys, successors, and/or assignees, in his
15 individual and not representative capacity, expressly waives and relinquishes any and all rights and
16 benefits which he may have under, or which may be conferred on him by the provisions of, Civil
17 Code Section 1542, as well as under any other state or federal statute or common law principle of
18 similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the
19 released matters.

20 In further consideration of the promises and agreements herein contained, Englander on his
21 own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and
22 assignees, waives any and all rights that he may have to institute or participate in, directly or
23 indirectly, any form of legal action, and releases all claims against Global Amici and Releasees,
24 including, without limitation, all actions and causes of action, suits, liabilities, demands, claims,
25 rights, judgments, duties, obligations, damages, costs, fines, penalties, losses, expenses, investigation
26 fees, expert fees, and attorneys' fees for claims arising under Proposition 65 or any other statute or
27 the common law with respect to the alleged or actual failure to warn about exposures to lead in
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1 Products imported, manufactured, distributed, sold, or offered for sale by Global Amici, before the
2 Effective Date, as alleged in the Notice and Complaint.

3 **4.3 Global Amici's Release of Englander**

4 Global Amici, on its own behalf and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
6 attorneys and other representatives, for any and all actions taken or statements made by Englander
7 and his attorneys and other representatives, whether in the course of investigating claims, seeking to
8 enforce Proposition 65 against it in this matter, or with respect to the Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and shall
11 be null and void if it is not approved and entered by the Court within one year after it has been fully
12 executed by the Parties, or by such additional time to which the Parties may agree in writing.

13 **6. SEVERABILITY**

14 If, after the Court's approval and entry of this Consent Judgment as a judgment, any provision
15 is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
16 affected.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. If Proposition 65 is repealed, preempted, or otherwise
20 rendered inapplicable by reason of law generally, or as to the Products, then Global Amici may
21 provide written notice to Englander of any asserted change in the law, and shall have no further
22 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
23 Products are so affected.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier, to the following addresses:

5 For Global Amici:

6 Tanner Sloan, Chief Executive Officer
7 Global Amici, Inc.
8 8400 Miramar Road, Suite 290
 San Diego, CA 92126

Copy to counsel:

Sarah Esmaili, Esq.
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, Floor 10
San Francisco, CA 94111

9 For Englander:

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

13 Any Party may, from time to time, specify in writing to the other, a change of address to which all
14 notices and other communications shall be sent.

15 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or portable
17 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
18 taken together, shall constitute one and the same document.

19 **10. POST-EXECUTION ACTIVITIES**

20 Englander agrees to comply with the reporting form requirements referenced in Health and
21 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
22 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
23 Judgment, which Englander shall take the lead to draft and file, and Global Amici shall support,
24 including appearing at the hearing if so required.

25 **11. MODIFICATION**

26 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
27 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
28 Party, and the entry of a modified consent judgment by the Court.

1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment, and have read, understand,
3 and agree to all the terms and conditions contained herein.

4 **AGREED TO:**

AGREED TO:

5
6 Date: 12/29/17

Date: 12/27/17

7 By: 

8 PETER ENGLANDER

By: 

TANNER SLOAN, CEO
GLOBAL AMICI INC.